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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,458	11/12/2003	Gary T. Neel	02-1134-G	6741

22852 7590 03/13/2007  
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EXAMINER
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VATHYAM, SUREKHA

ART UNIT	PAPER NUMBER
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1753

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/13/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/706,458	Applicant(s) NEEL ET AL.	
	Examiner Surekha Vathyam	Art Unit 1753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 53-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 53-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/04, 3/05, 8/06, 10/06, 11/06</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities:

Page 2, line 3, after "November 1, 2002," insert - -now U.S. Patent No. 6,743,635,- - .

Page 26, line 6, "preferred the check" should be changed to - -preferred check- - .

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 56 and 57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 56 and 57 recite the limitation "said blood sample" in line 3 of claim 56 and line 3 of claim 57. There is insufficient antecedent basis for this limitation in the claims.

5. Claims 56 and 57 recite the limitation "said sample chamber" in line 3 of claim 56 and line 3 of claim 57. There is insufficient antecedent basis for this limitation in the claims.

### ***Claim Rejections - 35 USC § 103***

Art Unit: 1753

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 53 – 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hyodo (US 5,589,045) in view of Beaty et al. (US 6,645,368).

Regarding claim 53, Hyodo ('045) discloses a meter (1) comprising: a connector (3); a processor (50); a memory (61, 70), a plurality of machine instructions stored in

Art Unit: 1753

said memory (see figs 1 – 5); a data acquisition system (see fig. 8) including at least one analog-to-digital converter (54). Hyodo ('045) discloses the data acquisition system capable of applying a voltage between electrodes such as working and counter electrodes (6, 7) (column 4, lines 47 – 52) or between fill-detect electrodes (9a, 9b) (column 7, lines 20 – 29), via reaction voltage setting circuit (63) and measuring any resulting current flowing between electrodes (column 4, lines 57 – 59) and also capable of measuring voltage drop (column 7, lines 6 – 15) and detecting the insertion of electrodes in the connector via the detection circuit (52) (column 4, lines 32 – 37).

Hyodo ('045) does not explicitly disclose the meter comprising a digital-to-analog converter.

Beaty ('368) teaches a meter (32) comprising a digital-to-analog converter (50).

It would have been obvious to one of ordinary skill to modify the meter of Hyodo ('045) to include a digital-to-analog converter as taught by Beaty ('368) because as Beaty ('368) explains, it is well established that digital-to-analog converters permit the meter to achieve accuracies in the range of about one-half percent or less (column 8, lines 27 – 30).

Regarding claim 54, Hyodo ('045) discloses the meter wherein the data acquisition system includes a wake-up circuit (52) (column 4, lines 32 – 37).

Regarding claim 55, Hyodo ('045) discloses the meter capable of applying voltage between electrodes such as working and counter electrodes (6, 7), via reaction

Art Unit: 1753

voltage setting circuit (63) and measuring any resulting current flowing between electrodes (column 4, lines 57 – 59).

Regarding claim 56, Hyodo ('045) discloses the meter capable of applying a voltage between electrodes such as fill-detect electrodes (9a, 9b), via reaction voltage setting circuit (63) and measuring any resulting current flowing between electrodes (column 4, lines 57 – 59).

Regarding claim 57, discloses the meter capable of applying voltage between electrodes such as working and counter electrodes (6, 7), via reaction voltage setting circuit (63) and measuring any resulting current flowing between electrodes (column 4, lines 57 – 59).

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Genshaw et al. (US 5,620,579) disclose a glucose meter with digital-to-analog converter.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Surekha Vathyam whose telephone number is 571-272-2682. The examiner can normally be reached on 7:30 AM to 4:00 PM.

Art Unit: 1753

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam X. Nguyen can be reached on 571-272-1342. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SV  
March 6, 2007



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